4. NEW TRIALS.—*After-discovered evidence—Case at bar.* A motion for a new trial on the ground of after-discovered evidence should not be granted unless it appears that the evidence was discovered after the trial; that it could not, by the exercise of reasonable diligence, have been discovered before the trial; that it was material, and such as ought on another trial to produce an opposite result on the merits; and that it is not merely cumulative, corroborative, or collateral. In the case at bar the evidence was discovered during the trial and might have been discovered before the trial by the exercise of reasonable diligence, and the record fails to disclose that any motion was made to postpone the case till the evidence could be obtained.

SHERWOOD AND OTHERS v. ATLANTIC & DANVILLE RAILWAY CO.

Decided at Richmond, February 11, 1897.—*Keith, P:*

1. RAILROADS—*Purchaser under foreclosure suit—Contracts not amounting to liens—Subordinate liens—Contracts as to termini of road.* The purchaser of a railroad under a decree in a suit brought to foreclose a mortgage thereon is discharged from the performance of all contracts of the old company which do not constitute liens on the property, and from the payment of all liens which are subordinate to the mortgage where the purchase price is not sufficient to pay the mortgage creditors and those having priority over the mortgage. The purchaser takes the property free and discharged of all such contracts and liens. In the case at bar the contract of the old company to make the City of Portsmouth a terminus of its road is not binding on the purchaser, although he had notice of the contract.

2. RAILROADS—*Terminus fixed by charter at one of two points—Mandamus.* Where the charter of a railroad company requires it to establish a terminus of the road at one of two points to be selected by it, the obligation imposed by the charter is satisfied by the construction and maintenance of such terminus at either of the points prescribed, and the purchaser of said railroad under foreclosure proceedings cannot be compelled by *mandamus* to establish a terminus at the other point, although such other point may, at one time, have been used as such terminus under a contract with the original company.

3. RAILROADS—*Reorganization under sec. 1234 of Code—Duties of new company—Branch roads—Mandamus—Case at bar.* The duties imposed upon a new railroad company organized under section 1234 of the Code, as amended, are such duties as the original company were bound, under the terms of its charter, to perform, but no additional or higher duty is imposed on the new company than already rested upon the original company. Whether or not the original company is obliged to maintain and operate a branch or lateral road is to be determined from its charter, or the general law. The writ of *mandamus* can only be used to enforce duties and obligations clearly imposed by the charter or general law. If power is simply conferred to construct a branch road, but its construction is not made obligatory, the company cannot be compelled to construct such branch, or, having constructed it, to maintain and operate it to the prejudice of the rights and interests of the company. In the case at bar the new company is not bound by the contract made with the original company, and neither the charter nor the general law requires either the original company or the new to maintain and operate the branch road into the city of Portsmouth.

4. CONSTRUCTION OF STATUTES—*Intent to be sought for—How ascertained.* In the construction of statutes it is the duty of courts to seek to ascertain the intention of the legislature, and in doing this they should consider the object of the statute, and the purpose to be accomplished, but the intent is also to be sought for by giving a fair construction to the language used, attributing to the words their ordinary and popular meaning, unless it plainly appears that they were used in some other sense.

JAMESON v. RIXEY AND OTHERS.—Decided at Richmond, March 18, 1897.—*Riely*, J:

1. PARTITION—*Lien for owelty—Duration of—Personal decree—Merger.* A lien for owelty of partition partakes of the nature of a vendor's lien and constitutes a prior encumbrance on the land on which it is charged, and follows the land into whosesoever hands it may come. The land of less value, and not its owner, is, however, the sole debtor. It is improper to render a personal decree against the owner of the less valuable piece of land for the difference in values, but the lien is not released by taking such personal decree or other security, nor is it merged in such decree, but subsists until it is clearly shown to have been waived, released, or satisfied.

2. PARTITION—*Lien for owelty—Statute of limitations—Presumption of payment—Case at bar.* Prior to the Code of 1887 there was no statutory limit to the enforcement of a vendor's lien, or a lien for owelty of partition, but the same continued until waived, released, or satisfied, or until sufficient time elapsed to raise the presumption of payment. In the case at bar the decree for partition was made prior to the adoption of the Code of 1887, and the evidence not only repels the presumption of payment, which is a mere presumption of fact, but shows that the lien has neither been waived, released, nor satisfied.

3. LACHES—*Ignorance of rights—Mere delay.* Laches cannot be imputed to one who is ignorant of his rights. Nor is mere delay always to be considered as laches. The relations of the parties, their degree of kindred, the inability of the debtor to pay, and other circumstances, may be taken into consideration, and where it is clearly shown that the delay has worked no injury, and can be satisfactorily accounted for, courts of equity will not allow it to defeat the recovery of a debt shown to be due and unpaid.

4. PURCHASERS—*Title papers—Notice—Means of knowledge—Equitable estoppel.* It is the duty of a purchaser of real estate to look to the title papers under which he buys. He is charged with notice of all that the records disclose affecting his title and also of all to which the knowledge there acquired would have led him. Means of knowledge with the duty of using them, are, in equity, equivalent to knowledge itself. In the absence of fraud or deception, where the same means and opportunities of tracing the title to real estate are equally open to both parties the doctrine of equitable estoppel does not apply.

BALLOU AND OTHERS v. BALLOU.—Decided at Richmond, March 18, 1897.—*Harrison*, J:

1. SUITS FOR PARTITION—*Allowance for improvements by one tenant.* A joint ten-